

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-5080

August 6, 2020

R E S O L U T I O N

Resolution E-5080. Approves a citation program enforcing compliance with the filing requirements of Integrated Resource Plans by Load-Serving Entities.

PROPOSED OUTCOME:

- This Resolution initiates a citation program authorizing Commission Staff to cite load serving entities (LSEs) for non-compliance with mandatory filing deadlines and reporting requirements of the Integrated Resource Planning (IRP) proceeding.

SAFETY CONSIDERATIONS:

- There are no safety considerations associated with this resolution.

ESTIMATED COST:

- There are no costs associated with this resolution.

SUMMARY

This Resolution would establish a Citation Program to compel Load Serving Entities (LSEs) to file their individual integrated resource plans in a timely and complete manner that facilitates the IRP process and ensures continued progress on reducing greenhouse gas (GHG) emissions by 40 percent by 2030, thereby meeting the objectives of Senate Bill (SB) 350.

This Integrated Resource Planning (IRP) Citation Program establishes a process for: assessing compliance, issuing fines, and appealing penalties. It specifies fines for failure to make required filings, filing late, or failure to file in the proper manner during the 2019-2020 IRP. The Citation Program would be used in future IRP cycles as well, subject to review and modifications.

The issuance of a citation for a specified violation is not mandatory. The Commission may initiate any authorized formal proceeding or pursue informal resolutions or other remedies to achieve completeness in the required LSE filings related to the IRP process.

BACKGROUND

In October 2015, the Legislature enacted Senate Bill (SB) 350 which requires the CPUC to focus energy procurement decisions on reducing greenhouse gas (GHG) emissions by 40 percent by 2030, including efforts to achieve at least 50 percent renewable energy procurement, doubling of energy efficiency, and promoting transportation electrification. In response, the Commission issued an Order Instituting Rulemaking in February 2016 on integrated resource planning to ensure adequate, cost-effective investment in a diverse range of electricity production resources for California. This mandate is codified in Public Utilities Code Sections 454.51 and 454.52. It directs the Commission to implement a process for integrated resource planning that will ensure that LSEs meet targets that allow the electricity sector to contribute to California's economy-wide greenhouse gas emissions reductions goals **at just and reasonable cost**.

The Commission established an Integrated Resource Planning program in Decision 18-02-018.¹ This rulemaking is based on the authority vested in the Commission by the California Constitution; California statutes and court decisions; and prior Commission decisions and orders. Nothing in this Resolution diminishes, alters, or reduces the Commission's existing authority to promote and enforce public safety and the reliability of California's electricity supply.

The Commission signaled its intent to develop an IRP citation program in Decision 19-04-040, issued May 1, 2019:² *"In future IRP cycles, we will implement a citation process so that entities failing to provide any documentation will face monetary sanctions."*

¹ Decision Setting Requirements for Load Serving Entities Filing Integrated Resource Plans, adopted February 8, 2018 in **Rulemaking (R.) 16-02-007**, available at <http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=209771632>

² Decision Adopting Preferred System Portfolio and Plan for 2017-2018 Integrated Resource Plan Cycle, Section 2.4.4: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M287/K437/287437887.PDF>

The IRP program requires LSEs to file individual integrated resource plans with the Commission once per IRP cycle. In the 2017-2018 IRP cycle, **Decision (D.) 18-02-018** required LSEs to file an individual IRP or documentation substantiating eligibility for an exemption by August 1, 2018. All but one entity that were required to file an IRP did so in timely manner. One **Electric Service Provider (ESP)** (Commercial Energy) did not submit its IRP until April 26, 2019, approximately eight months late.

Decision 20-03-028,³ adopted on March 26, 2020, requires CPUC-jurisdictional LSEs to submit two sets of plans by September 1, 2020. All LSEs operating within the CAISO Balancing Authority Area (BAA) must file conforming portfolios for their individual IRPs addressing their proportional share of the 46 million metric ton and the 38 million metric ton greenhouse gas targets for year 2030. This requires the completion of three template documents for each conforming portfolio. These templates are posted on the CPUC website:⁴ a [Narrative Template](#), a [Resource Data Template](#) and a [Clean System Power Calculator](#). Each of these completed templates will provide inputs that are integral to the state's integrated resource planning process, and thus LSEs are required to submit these template documents in the required format and timeframe for each portfolio. Future IRP cycles may have different filing requirements, as determined by the Commission.

Each IRP cycle the Commission evaluates whether these LSE integrated resource plans collectively will result in a reliable and affordable electric system that meets the GHG emissions reduction requirements of state law and policy. For this aggregation the Commission must have timely and accurate information from each LSE. Failure to submit complete information about its Conforming Portfolio by even one LSE could significantly undermine the ability of the Commission to evaluate an IRP portfolio that encompasses the footprint of the California Independent System Operator (CAISO).

DISCUSSION

This Resolution creates an IRP Citation Program under the administration of the Consumer Protection and Enforcement Division for enforcing compliance with

³ [2019-2020 Electric Resource Portfolios to Inform Integrated Resource Plans and Transmission Planning](#), March 26, 2020: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M331/K772/331772681.PDF>

⁴ <https://www.cpuc.ca.gov/General.aspx?id=6442459770>

IRP filing requirements that apply to all CPUC-jurisdictional LSEs. Specifically, the citation program would enhance compliance with the requirements for submission of integrated resource plans and responses to requests for information by Energy Division reasonably related to the implementation of integrated resource planning requirements.

Generally, LSEs are expected to fully and accurately complete the LSE filing documents for each IRP cycle by the deadlines specified. For this current IRP cycle, this would require adherence to specific filing requirements standards, including the clear instructions within each of these posted documents:

- *Resource Data Template: Complete responses with monthly energy and capacity procurement data and existing formulas (pre-written into template) copied down all the way to the bottom of the LSE data template.*
- *Narrative Template: Complete responses to each section and subsection. For the sections/subsections that are not applicable to the LSE, the Respondent should indicate "Not applicable" and provide an explanation.*
- *Clean System Power Calculator: Complete input values in the yellow cells in the Demand Inputs, the Supply Inputs and the ESP GHG Benchmark worksheets.*

Public Utilities Code Section 702 mandates that "Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in anyway relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees." California law, including P.U. Code Section 7, authorizes the Commission to delegate certain powers to its staff, including the investigation of facts preliminary to agency action, and the assessment of specific fines for certain violations.

A citation program administered by Staff for a specified violation will allow prompt action by the Commission. This proposed resolution is consistent with these other approved citation programs.

The issuance of a citation for a specified violation is not mandatory. In enforcing compliance with IRP filing requirements, or in response to any Specified Violation, the Commission may initiate any authorized formal proceeding or

pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity. Finally, the Commission's enforcement of an IRP Citation Program by informal proceedings, formal proceedings, or otherwise, does not bar or affect the remedies otherwise available to other persons or government agencies.

COMMENTS

Draft Resolution E-5080 was mailed to the IRP service list on July 3, 2020. Five parties submitted comments:

- Alliance for Retail Markets (AReM)
- California Community Choice Association (CalCCA)
- Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), San Diego Gas & Electric Company (SDG&E) (together, the Joint IOUs)
- Public Advocates Office (Cal Advocates)
- Shell Energy North America (Shell Energy)

Key recommendations to amend the Draft Resolution include:

Definition of a "Specified Violation": AreM, CalCCA, the Joint IOUs and Shell Energy recommended terminology changes to narrow the definition of a "Specified Violation." We adopt most of these terminology recommendations, including CalCCA's emphasis on "unambiguous" requirements. We will not adopt CalCCA's recommendation to define a "Specified Violation" to be a "knowing" failure because LSEs have an affirmative duty to provide accurate information and Commission Staff is readily available to assist with any inquiries. We recognize Shell Energy's concern that Energy Division Staff should work informally with LSEs to identify and resolve problems with or deficiencies in their IRP plans and related information. We anticipate Staff will make proactive efforts to resolve deficiencies before initiating a citation.

Length of Cure Period: The Joint IOUs and Shell Energy recommend extending the proposed five business day period for an LSE to remedy an incomplete or incorrect IRP plan or data response to ten business days. CalCCA recommends twenty business days. We adopt a ten-calendar day cure period as a reasonable time which should underscore the urgency needed to correct IRP plans and data

responses. We also adopt CalCCA's recommended terminology changes that describe the cure period.

Amount of Scheduled Penalty: We adopt the Joint IOUs' recommendation to not include double penalties in the same IRP cycle. We will not adopt CalCCA's recommended language to specify the "maximum" fine of \$1,000, and to enable a smaller fine because we do not favor adding unnecessary Staff discretion in the administration of this citation program. We will not adopt Cal Advocates recommendations to tie the penalty amount to the size of the LSE's estimated load, to allow the Commission the option to assess higher penalties, and to impose additional penalties for repeated failures across more than one IRP cycle. We believe these Cal Advocates recommendations are unnecessary because this resolution does not limit the Commission's authority to impose penalties through other means.

Process for Appealing a Citation: CalCCA recommends more specificity in the process by which an LSE may appeal a citation. We adopt much of the language changes and additions recommended by CalCCA and further specify that a Respondent may appeal a citation in accordance with the procedures with Resolution ALJ-377 and/or other relevant authority.

Terminology: We adopt most of the recommended language changes offered by the commenting parties for clarification and consistency in the administration of this IRP Citation Program.

FINDINGS

1. Decision 19-04-040 concluded that the Commission should implement a citation program to ensure compliance with Public Utilities Code Sections 454.51 and 454.52.
2. Decision 20-03-028 established a schedule for all LSEs required to participate in the Commission's integrated resource planning process to file two sets of Integrated Resource plans by September 1, 2020.
3. Decision 20-03-028 further requires that these plans should include Conforming Portfolios that adhere to the assumptions used to form the 2019-2020 Reference System Portfolio for both the 46 MMT GHG target and the 38 MMT GHG target in 2030.
4. The Commission is authorized to enforce compliance with the IRP.

5. The Commission has the power to act as an enforcement agency and to ensure that penalties are promptly prosecuted and collected pursuant to Public Utilities Code Section 2101.
6. Public utilities are subject to Commission enforcement action and penalties pursuant to Public Utilities Code Sections 2102-2105, 2017, 2108 and 2114.
7. Pursuant to Public Utilities Code Section 394.25, electric service providers are subject to Commission enforcement action pursuant to Public Utilities Code Sections 2102-2105, 2017, 2108 and 2114 as if they were public utilities.
8. Community choice aggregators are subject to enforcement action pursuant to Public Utilities Code Section 2111.
9. Public Utilities Code Section 702 mandates every public utility to obey and comply with every Commission order, decision, direction, or rule.
10. Under California law, including Public Utilities Code Section 7, the Commission may delegate authority to its Staff to perform certain functions.
11. Delegation of authority to Commission Staff to issue citations and levy Scheduled Fines for Specified Violations will encourage compliance with the IRP **filing** requirements.
12. The Scheduled Fines set forth in Appendix A are reasonable, will encourage complete and timely filings of IRPs, and will encourage complete and timely responses to requests for information from Commission Staff that are directly related to IRPs.
13. The proposed procedures for the IRP citation program ensure due process, fairness, and efficiency in the application of the citation program.

THEREFORE IT IS ORDERED THAT:

1. The citation program and the Scheduled Fines for the Specified Violations as described in Appendix A, are hereby adopted.
2. Authority is delegated to Commission Staff to issue citations and levy Scheduled Fines for the Specified Violations set forth in Appendix A to enforce compliance for Load Serving Entities subject to the Commission's **Integrated Resource Plan** requirements.
3. The issuance of a citation for a Specified Violation is not mandatory, and, in the alternative, the Commission may initiate any formal proceeding authorized by the California Constitution, the Public Utilities Code, other state and federal statutes, court decisions or decrees, the Commission's Rules of Practice and Procedure, or prior Commission orders, decisions, rules, directions, demands or requirements, and pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity.
4. Nothing in this Resolution bars or affects the rights or remedies otherwise available to other persons or government agencies.
5. Resolution E-5080 is enacted.
6. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 6, 2020; the following Commissioners voting favorably thereon:

/s/Alice Stebbins
ALICE STEBBINS
Executive Director

MARYBEL BATJER
President

LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD ECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners

Appendix A

IRP Citation Program

1. Citation Program Definitions

- 1.1. Conforming Portfolio – A “Conforming Portfolio” conforms to **expressly stated** IRP Planning Standards, **achieve at a minimum** the 2030 LSE-specific GHG Emissions Benchmark, use of the LSE’s assigned load forecast, uses inputs and assumptions matching those used in developing the Reference System Portfolio, **and includes** a **reasonably** complete Narrative Template, a Resource Data Template and Clean System Power Calculator.
- 1.2. Integrated Resources Planning Standards: the set of CPUC IRP rules, guidelines, formulas and metrics, **timely and expressly stated in a CPUC decision or ruling or in Staff guidance documents**, that LSEs must include in their **Standard** LSE Plans.
- 1.3. Data Templates – Data provided by the LSE should be reported in the “Resource Data Template” and similar guidance documents provided by the Energy Division Staff.
- 1.4. Load Serving Entities: Include investor owned utilities (IOUs), electric service providers (ESPs), rural electric cooperatives and community choice aggregators (CCAs).
- 1.5. Reference System Plan – The Reference System Plan refers to the Commission-approved integrated resource plan that includes an optimal portfolio (Reference System Portfolio) of future resources for serving load in the CAISO balancing authority area (BAA) and meeting multiple state goals, including meeting GHG reduction and reliability targets at least cost.
- 1.6. Standard LSE Plan - A Standard LSE Plan is the type of integrated resource plan that an LSE operating within the CAISO BAA is required to file. For 2020, each Standard LSE Plan includes three completed template documents; the incomplete versions of these documents are posted on the CPUC website: a [Narrative Template](#), a [Resource Data Template](#) and a [Clean System Power Calculator](#).
 - 1.6.1. Narrative Template – This document is to be used by each LSE to describe how it developed its Standard LSE plan, present results of analytical work and demonstrate to the Commission and the stakeholders the LSE’s action plans. This template documents is posted on the CPUC website [here](#).
 - 1.6.2. Resource Data Template – a workbook is for reporting the LSE’s existing and planned energy and capacity contracts in the context of IRP. This template document is posted on the CPUC website [here](#).
 - 1.6.3. Clean System Power Calculator – a tool for LSEs to use in estimating the GHG and criteria pollutant emissions of their portfolios. The tool also calculates

emissions from other generation sources that can be attributed to an LSE's resource portfolio. This template document is posted on the CPUC website [here](#).

2. Criteria for Determination of Completeness of Data Templates

- 2.1. LSEs should fully and accurately complete the LSE filing documents for the current IRP cycle in a way that adheres to **the** filing requirements standards **expressly specified in Section 1** and the instructions within each of these posted documents.

3. Specified Violations and Scheduled Penalties

- 3.1. "Specified Violation" means the failure, absent a **formally approved** extension, to submit a completed: (a) Standard LSE Plan at the time required; and (b) other supporting data clearly and reasonably requested by Commission Staff that Staff identifies as being reasonably related to a load-serving entity's Integrated Resource Plan at the time required.
- 3.2. "Specified Violation" also means the failure, absent an extension formally approved by the Commission's Executive Director or Deputy Executive Director, to submit other supporting data **clearly and reasonably** requested by Commission Staff that is reasonably related to the implementation of the Commission's Integrated Resource Planning program.
- 3.3. "Cure Periods" After identification of a **Specified Violation** by Energy Division staff, Energy Division staff shall notify the LSE of the **Specified Violation** and the LSE **will** be able to cure the deficiency within **ten calendar** days of such notification **without** a set penalty. Depending on the complexity of the information requested, Staff may determine that more than ten calendar days is required, and in such case will notify the LSE of the appropriate cure period.
- 3.4. "Specified Violation cured after ten calendar days from the date of notification" means a failure to submit complete and accurate data before the formally established reporting deadline where the **failure** was remedied after **ten calendar** days after notification by Energy Division staff. After identification of a **Specified Violation** by Energy Division staff, Energy Division staff shall notify the LSE of the **Specified Violation** and the LSE is able to cure the **Specified Violation** after **ten calendar** days of such notification for a set penalty.
- 3.5. "Scheduled Penalty" is the reasonable amount of monetary fine imposed upon an LSE with a Specified Violation that has not been cured. The fine is \$1,000 per incident, plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.

4. Procedures for Citation Program

- 4.1. **Citations for Specified Violations.** If a potential Specified Violation is identified, Energy Division staff will conduct an informal investigation to verify that a Specified Violation has occurred. The informal investigation must include consultation with the LSE and an opportunity for the LSE to respond to requests for information or clarification.
- 4.2. **Issuance of Citations.** After appropriate informal investigation and verification that a Specified Violation defined in this Resolution has occurred, the Commission's Consumer Protection and Enforcement Division is authorized to issue a citation. The Specified Violations and the corresponding Scheduled Penalties that may be levied are described in this document.
- 4.3. **Respondent.** An LSE that has **received a citation for** a Specified Violation from **the Consumer Protection and Enforcement Division** shall be provided a Cure Period of ten calendar days.
- 4.4. **Service of Citations.** Citations shall be sent by **Commission** Staff by first class mail and e-mail to the Respondent at the address of the agent for service of process.
- 4.5. **Content of Citations.** Citations **shall** state the alleged violation(s), the evidence supporting the alleged violation, and the proposed Scheduled Penalty. The citation **must include a summary of** the evidence and Commission Staff **shall** make the evidence available for timely inspection upon request by the Respondent. Citations also **shall** include an explanation of how to file an appeal of the citation, including the explanation of a right to have a hearing, to have a representative at the hearing, and to request a transcript. **The proposed Scheduled Penalty stated in the citation shall not increase during the time periods specified herein for the Respondent to either accept the citation or appeal the citation.**
- 4.6. **Response to Citation.** A Respondent may either: (1) accept the citation and the proposed Scheduled Penalty; or (2) appeal the citation in accordance with the procedures with Resolution ALJ-377 and/or other relevant authority.
- 4.7. **Filing with Commission Staff.** Unless otherwise specified, "notify Commission Staff," "filing," or "file" means to send an email to the address specified in the order or citation that requires the filing or notification.
- 4.8. **Acceptance of Scheduled Penalty.** In the event the proposed Scheduled Penalty is accepted, **the Scheduled Penalty indicated in the Citation will be final.** The Respondent should notify Commission Staff in writing and should pay the Scheduled Penalty in full as set forth below within (30) days of the date of the citation.
- 4.9. **Appeal of Citation.** In lieu of accepting the Scheduled Penalty, a Respondent may appeal the citation and request a hearing. In the event of an appeal, any

remedy available may be imposed, and the remedy should not be mandated **but may not exceed** the **proposed** Scheduled Penalty.

- 4.9.1. **Notice of Appeal.** To appeal a citation, the Respondent must submit a written Notice of Appeal. The Notice of Appeal must state the grounds for appeal and be submitted to Commission Staff within thirty (30) days of the date of the citation.
- 4.9.2. **Referral to Administrative Law Judge.** Upon receipt of a timely Notice of Appeal, Commission Staff should promptly provide an electronic copy of the Notice of Appeal to the Chief Administrative Law Judge. The Chief Administrative Law Judge should promptly designate an Administrative Law Judge to hear the Appeal.
- 4.9.3. **Time of Hearing.** No less than ten (10) days after the Notice of Appeal is filed, the assigned Administrative Law Judge shall schedule the matter for hearing promptly **unless the LSE waives its right to hearing.** The Administrative Law Judge, may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- 4.9.4. **Location of the Hearing.** Appeals of citations should be heard in the Commission's San Francisco office on regularly scheduled days.
- 4.9.5. **Transcripts.** The Respondent may order a transcript of the hearing and should pay the cost of the transcript in accordance with the Commission's specified procedures.
- 4.9.6. **Representation at Hearing.** The Respondent may be represented at the hearing by an attorney or other representative, but any such representation would be at the Respondent's expense.
- 4.9.7. **Evidentiary Hearing.** At an evidentiary hearing, Commission Staff bears the burden of proof and, accordingly, shall open and close. The Administrative Law Judge may, in his or her discretion to better ascertain the truth, alter the order of presentation. Formal rules of evidence do not necessarily apply, and all relevant and reliable evidence may be received at the discretion of the Administrative Law Judge.
- 4.9.8. **Submission.** The matter shall be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period to permit a party to submit additional evidence or argument.
- 4.9.9. **Decision.** The Administrative Law Judge shall issue a draft Resolution resolving the appeal not later than thirty (30) days after the appeal is submitted in accordance with subsection 3.7.8, and the draft Resolution shall be placed on the first available agenda, consistent with the Commission's Rules of Practice and Procedure.
- 4.9.10. **Communications.** From the date that a citation is issued to and including the date when the final decision is issued, neither the Respondent nor

Commission Staff, or any agent or other person on behalf of the Respondent or Commission Staff, may communicate regarding the appeal, orally or in writing, with a Commissioner, Commissioner’s advisor, or Administrative Law Judge, except as expressly permitted under these procedures.

4.9.11. **Payment of Scheduled Penalties.** Payment of Scheduled Penalties shall be submitted to the Commission’s Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of certified check, payable to the Public Utilities Commission for the credit of the State General Fund.

4.10. **Default.** If the Respondent: (a) notifies Commission Staff of acceptance of a Scheduled Penalty and fails to pay the full amount of the Scheduled Penalty within thirty (30) days of the date of the written acceptance of the Scheduled Penalty; or (b) fails to notify Commission Staff of acceptance of a Scheduled Penalty or fails to file a written Notice of Appeal in the manner and time required, then the citation and proposed Scheduled Penalty indicated in the citation becomes final and the Respondent is in default. Upon default, any unpaid balance of a Scheduled Penalty should accrue interest at the legal rate of interest for judgments, and Commission Staff and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

4.11. **Reporting.** Commission Staff should regularly report to the Commission summarizing actions taken pursuant to this Resolution. The report should include a summary of the citations and penalties imposed, penalties paid and the disposition of any appeals.

Specified Violations and Scheduled Penalties

Specified Violation	Scheduled Penalty
Failure to meet the requirements specified in Section 1 at the time required.	\$1,000 per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter until the deficiency is cured.
Failure to respond at the time required to Commission Staff requests to submit other supporting data that Commission Staff identifies as being reasonably related to the load-serving entity’s Integrated Resource Plan.	\$1,000 per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.
Failure to file corrected Individual Integrated Resource Plans within 10 calendar days after receiving notice from Commission Staff that	\$1,000 per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.

<p>the Integrated Resource Plan is incorrect or incomplete.</p>	
<p>Failure to correct responses to Commission Staff requests to submit other supporting data that Commission Staff identifies as being reasonably related to the load-serving entity's Integrated Resource Plan within 10 calendar days after receiving notice from Commission Staff that the response is incorrect or incomplete.</p>	<p>\$1,000 per incident plus \$500 per day for the first ten days the filing was late and \$1,000 for each day thereafter.</p>